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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,340	11/19/2001	Henry E. Agbaje	MTC6802 (39-21 (53156A))	8785
321	7590	12/26/2008	EXAMINER	
SENNIGER POWERS LLP 100 NORTH BROADWAY 17TH FLOOR ST LOUIS, MO 63102			PRYOR, ALTON NATHANIEL	
			ART UNIT	PAPER NUMBER
			1616	
			NOTIFICATION DATE	DELIVERY MODE
			12/26/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/988,340	<b>Applicant(s)</b> AGBAJE ET AL.	
	<b>Examiner</b> ALTON N. PRYOR	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 3-8, 10, 12-40, 42-47, 49 and 51-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-8, 10, 12-40, 42-47, 49, and 51-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's arguments filed 9/26/08 have been fully considered but they are not persuasive. See argument below.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-8, 10, 12-40, 42-47, 49, and 51-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Hasebe et al (US 6,706,666) and Wright et al (US 5,750,468).

Hasebe et al discloses glyphosate compositions comprising applicants' alkoxyated triamine compounds of formula 27 (x and y = 1; R1,R2,R3,R4 and R5 = substituted methyl) ; i.e., the triamine surfactant is a chelating agent. See abstract, column 15 line 57 – column 16 line 42. The triamine compounds (chelates) are useful for enhancing glyphosate effectiveness (see abstract).

“Wright et al teach the utility of polyalkoxyated etheramine surfactants (applicants' surfactants of formula 5) in making glyphosate formulations. The surfactants may be in the form of amines, amine oxides, or quaternary ammonium compounds (columns 1-8). Additional materials may be added including "additives to further enhance herbicidal activity, such as ammonium sulfate or fatty acids" (col 8, lines 26-34). The surfactants of Wright et al are used in order to improve the concentration of active agent (col 5, lines 31-40) and the long term storage stability of the

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pesticidal compositions (col 8, lines 12-25).”

Each of these references teaches that glyphosate may be used in its various conventional salt or ester forms.

One of ordinary skill in the art would be motivated to combine the teachings of these patents because they teach that the addition of surfactants to glyphosate compositions yields improved benefits, i.e., improvements in effectiveness or activity. The ordinary artisan would have been motivated to combine multiple ingredients (glyphosate, chelating agent, etheramine) as taught in the references in order to take advantage of the noted characteristics provided by the surfactants.

One of ordinary skill in the art would be motivated to combine surfactants with different, clearly established advantages, and adjust the concentration of each to optimize their effects.

Thus, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have combined the etheramine surfactant and triamine compound (chelating agent) in glyphosate compositions because Wright et al specifically discloses the combination of glyphosate with applicants' surfactants of formula 5, and suggests the addition of components which can enhance the herbicidal activity of glyphosate. Hasebe et al teach that chelating components of applicants' formula (27) enhance glyphosate activity; thus one of ordinary skill in the art would expect an enhanced herbicidal effect would result from adding the Hasebe chelating agent (the instant triamine compound) to the compositions of Wright et al. Determination of specific ratios of components is within the skill level of the ordinary artisan, as is the selection of the specific form of glyphosate (ester, IPA salt, K salt, etc.); absent evidence of criticality, the selection of these ratios and components are seen as obvious.

*Response to Applicants' Argument*

Applicant argues that Hasebe discloses compound f (which is instant compound 27) as a chelating agent not a surfactant. Therefore, compound f taught by Hasebe is not a triamine surfactant of the instant claims. The Examiner disagrees with Applicants' argument. The Examiner argues the definition of instant compound 27 in the claim is made obvious by Hasebe compound f. In a claim to a composition a statement to its utility has no patentable significance. Whether Hasebe teaches compound f as preferred or non-preferred ingredient is immaterial. The fact that Hasebe discloses compound f as a chemical that can be used in herbicidal composition would make it obvious to use.

Applicant argues that Hasebe does not describe or suggest the alkoxyated triamine surfactants of formula (27), i.e., Hasebe teaches triamine chelating agent rather than an alkoxyated triamine surfactant as claimed. The Office has not established that Hasebe's chelator compound (f) is a surfactant falling within the scope of the pending claims. Compound (f) could not be a surfactant because it has no oil-soluble hydrophobic group that is required by surfactants. The Examiner argues that compound (f) meets the claim limitations of instant compound 27. According to the Applicant's description of an alkoxyated triamine in the claims, Hasebe makes instant compound 27 obvious. There is nothing recited in the substituent definition limitations associated with in compound 27 that would distinguish compound 27 from Hasebe's chelating agent (f). A statement regarding the intended use of compound 27 as a surfactant in the claims has no patentable significance since claims are directed to compositions. One would have been motivated to combine the ingredients of Hasebe et al and Wright et al because the addition of surfactants to glyphosate compositions, i.e., improvements in effectiveness or activity. The ordinary artisan would have been motivated to combine multiple

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ingredients (glyphosate, chelating agent, etheramine) as taught in the references in order to take advantage of the noted characteristics (improvements in effectiveness or activity) provided by the surfactants. One of ordinary skill in the art would be motivated to combine surfactants with different, clearly established advantages, and adjust the concentration of each to optimize their effects.

Thus, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have combined the etheramine surfactant and triamine compound (chelating agent) in glyphosate compositions because Wright et al specifically discloses the combination of glyphosate with applicants' surfactants of formula 5, and suggests the addition of components which can enhance the herbicidal activity of glyphosate. Hasebe et al teach that chelating components of applicants' formula (27) enhance glyphosate activity; thus one of ordinary skill in the art would expect an enhanced herbicidal effect would result from adding the Hasebe chelating agent (the instant triamine compound) to the compositions of Wright et al.

### ***Claim Rejections - 35 USC § 103***

Claims 59-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasebe and Wright as applied to claims 3-8, 10, 12-40, 42-47, 49, and 51-58 above, and further in view of Nielsen et al (USPN 5795847; 8/18/98). Hasebe and Wright teach all that is recited in claims 59-61 except for the invention comprising an alkoxylated triamine. However, Nielsen teaches that herbicidal compositions can comprise alkoxylate triamines. It would have been obvious to one having ordinary skill in the art to modify the invention of Hasebe - Wright to include the

alkoxylated triamine taught by Nielsen. One would have been motivated to do this since all individual teachings are to herbicidal inventions.

*Response to Applicant's argument*

Applicant argues that Nielsen et al. teach numerous surfactants, including triamine surfactants, and therefore, it would have not been obvious to pick the triamine surfactant from the thousands of surfactants taught by Nielsen et al. Nielsen et al. do not provide preferred triamine surfactant examples. The Examiner argues that Nielsen et al. teach alkoxylated triamines broadly. Therefore in the absence of unexpected results for instant alkoxylated triamines, Nielsen et al. make obvious the instant alkoxylated triamines. It is not required for a reference to specifically point out a preferred ingredient (alkoxylated triamine) in order to make the selection of that ingredient obvious. The mere fact that the reference suggests the ingredient as a choice makes the ingredient obvious.

No claim is allowed.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/

Primary Examiner, Art Unit 1616